

**Showing Current Law as Amended by H.R. \_\_\_\_ (BUILDER Act of 2023)**

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

**Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.)**

**(Sec. 101) §4331. Congressional declaration of national environmental policy**

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may-

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

**(Sec. 102) §4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts**

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in

accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall-

(A) utilize a systematic, interdisciplinary approach which will ~~insure~~ ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will ~~insure~~ ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) consistent with the provisions of this Act and except as provided by other provisions of law, include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on-

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.]

(i) reasonably foreseeable environmental effects with a reasonably close causal relationship to the proposed agency action;

(ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) a reasonable number of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, are within the jurisdiction of the agency, meet the purpose and need of the proposed agency action, and, where applicable, meet the goals of the applicant;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.

Prior to making any detailed statement, ~~the responsible Federal official~~ the head of the lead agency shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document;

(E) make use of reliable existing data and resources in carrying out this Act;

~~(D)~~ (F) ~~Any~~ any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.<sup>1</sup>

~~[(E)]~~ (G) [study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;] consistent with the provisions of this Act, study, develop, and describe technically and economically feasible alternatives within the jurisdiction and authority of the agency;

~~[(F)]~~ (H) consistent with the provisions of this Act, recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

~~[(G)]~~ (I) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

~~[(H)]~~ (J) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

~~[(I)]~~ (K) assist the Council on Environmental Quality established by subchapter II of this chapter.

### **(Sec. 103) §4333. Conformity of administrative procedures to national environmental policy**

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

### **(Sec. 104) §4334. Other statutory obligations of agencies**

Nothing in [section 4332 or 4333 of this title](#) shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental

quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

## **(Sec. 105) §4335. Efforts supplemental to existing authorizations**

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

## **Sec. 106. Procedure for determination of level of review**

(a) THRESHOLD DETERMINATIONS.—An agency is not required to prepare an environmental document with respect to a proposed agency action if—

(1) the proposed agency action is not a final agency action within the meaning of such term in chapter 5 of title 5, United States Code;

(2) the proposed agency action is covered by a categorical exclusion established by a Federal agency or by another provision of law;

(3) the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law;

(4) the proposed agency action is, in whole or in part, a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action;

(5) the proposed agency action is a rulemaking that is subject to section 553 of title 5, United States Code; or

(6) the proposed agency action is an action for which such agency's compliance with another statute's requirements serve the same or similar function as the requirements of this Act with respect to such action.

(b) LEVELS OF REVIEW.—

(1) ENVIRONMENTAL IMPACT STATEMENT.—An agency shall issue an environmental impact statement with respect to a proposed agency action that has a significant effect on the quality of the human environment.

(2) ENVIRONMENTAL ASSESSMENT.—An agency shall prepare an environmental assessment with respect to a proposed agency action that is not likely to have a significant effect on the quality of the human environment, or if the significance of such effect is unknown. Such environmental assessment shall be a concise public document prepared by a Federal agency to set forth the basis of such agency's finding of no significant impact.

(3) SOURCES OF INFORMATION.—In making a determination under this subsection, an agency—

(A) may make use of any reliable data source; and

(B) is not required to undertake new scientific or technical research.

## **Sec. 107. Timely and unified federal reviews**

(a) LEAD AGENCY.—

(1) DESIGNATION.—

(A) IN GENERAL.—If there are two or more involved Federal agencies, such agencies shall determine, by letter or memorandum, which agency shall be the lead agency based on consideration of the following factors:

(i) Magnitude of agency's involvement.

- (ii) Project approval or disapproval authority.
- (iii) Expertise concerning the action's environmental effects.
- (iv) Duration of agency's involvement.
- (v) Sequence of agency's involvement.

(B) JOINT LEAD AGENCIES.—In making a determination under subparagraph (A), the involved Federal agencies may, in addition to a Federal agency, appoint such Federal, State, Tribal, or local agencies as joint lead agencies as the involved Federal agencies shall determine appropriate. Joint lead agencies shall jointly fulfill the role described in paragraph (2).

(2) ROLE.—A lead agency shall, with respect to a proposed agency action—

(A) supervise the preparation of an environmental document if, with respect to such proposed agency action, there is more than one involved Federal agency;

(B) request the participation of each cooperating agency at the earliest practicable time;

(C) in preparing an environmental document, give consideration to any analysis or proposal created by a cooperating agency with jurisdiction by law or a cooperating agency with special expertise;

(D) develop a schedule, in consultation with each involved cooperating agency, the applicant, and such other entities as the lead agency determines appropriate, for completion of any environmental review, permit, or authorization required to carry out the proposed agency action;

(E) if the lead agency determines that a review, permit, or authorization will not be completed in accordance with the schedule developed under subparagraph (D), notify the agency responsible for issuing such review, permit, or authorization of the discrepancy and request that such agency take such measures as such agency determines appropriate to comply with such schedule; and

(F) meet with a cooperating agency that requests such a meeting.

(3) COOPERATING AGENCY.—The lead agency may, with respect to a proposed agency action, designate any involved Federal agency, or a State, Tribal, or local agency as a cooperating agency. A cooperating agency may, not later than a date specified by the lead agency, submit comments to the lead agency. Such comments shall be limited to matters relating to the proposed agency action with respect to which such agency has special expertise or jurisdiction by law with respect to an environmental issue.

(4) REQUEST FOR DESIGNATION.—Any Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation of a lead agency with respect to a proposed agency action under paragraph (1) may submit a written request for such a designation to an involved Federal agency. An agency that receives a request under this paragraph shall transmit such request to each involved Federal agency and to the Council.

(5) COUNCIL DESIGNATION.—

(A) REQUEST.—Not earlier than 45 days after the date on which a request is submitted under paragraph (4), if no designation has been made under paragraph (1), a Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation of a lead agency may request that the Council designate a lead agency. Such request shall consist of—

(i) a precise description of the nature and extent of the proposed agency action; and

(ii) a detailed statement with respect to each involved Federal agency and each factor listed in paragraph (1) regarding which agency should serve as lead agency.

(B) TRANSMISSION.—The Council shall transmit a request received under subparagraph (A) to each involved Federal agency.

(C) RESPONSE.—An involved Federal agency may, not later than 20 days after the date of the submission of a request under subparagraph (A), submit to the Council a response to such request.

(D) DESIGNATION.—Not later than 40 days after the date of the submission of a request under subparagraph (A), the Council shall designate the lead agency with respect to the relevant proposed agency action.

(b) ONE DOCUMENT.—

(1) DOCUMENT.—To the extent practicable, if there are 2 or more involved Federal agencies with respect to a proposed agency action and the lead agency has determined that an environmental document is required, such requirement shall be deemed satisfied with respect to all involved Federal agencies if the lead agency issues such an environmental document.

(2) CONSIDERATION TIMING.—In developing an environmental document for a proposed agency action, no involved Federal agency shall be required to consider any information that becomes available after the sooner of, as applicable—

(A) receipt of a complete application with respect to such proposed agency action; or

(B) publication of a notice of intent or decision to prepare an environmental impact statement for such proposed agency action.

(3) SCOPE OF REVIEW.—In developing an environmental document for a proposed agency action, the lead agency and any other involved Federal agencies shall only consider the effects of the proposed agency action that—

(A) occur on Federal land; or

(B) are subject to Federal control and responsibility.

(c) REQUEST FOR PUBLIC COMMENT.—Each notice of intent to prepare an environmental impact statement under section 102 shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.

(d) STATEMENT OF PURPOSE AND NEED.—Each environmental impact statement shall include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action.

(e) ESTIMATED TOTAL COST.—The cover sheet for each environmental impact statement shall include a statement of the estimated total cost of preparing such environmental impact statement, including the costs of agency full-time equivalent personnel hours, contractor costs, and other direct costs.

(f) PAGE LIMITS.—

(1) ENVIRONMENTAL IMPACT STATEMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an environmental impact statement shall not exceed 150 pages, not including any citations or appendices.

(B) EXTRAORDINARY COMPLEXITY.—An environmental impact statement for a proposed agency action of extraordinary complexity shall not exceed 300 pages, not including any citations or appendices.

(2) ENVIRONMENTAL ASSESSMENTS.—An environmental assessment shall not exceed 75 pages, not including any citations or appendices.

(g) SPONSOR PREPARATION.—A lead agency shall allow a project sponsor to prepare an environmental assessment or an environmental impact statement upon request of the project sponsor. Such agency may provide such sponsor with appropriate guidance and assist in the preparation. The lead agency shall independently evaluate the environmental document and shall take responsibility for the contents upon adoption.

(h) DEADLINES.—

(1) IN GENERAL.—Except as provided in paragraph (2), with respect to a proposed agency action, a lead agency shall complete, as applicable—



(A) the environmental impact statement not later than the date that is 2 years after the sooner of, as applicable—

(i) the date on which such agency determines that section 102(2)(C) requires the issuance of an environmental impact statement with respect to such action;

(ii) the date on which such agency notifies the applicant that the application to establish a right-of-way for such action is complete; and

(iii) the date on which such agency issues a notice of intent to prepare the environmental impact statement for such action; and

(B) the environmental assessment not later than the date that is 1 year after the sooner of, as applicable—

(i) the date on which such agency determines that section 106(b)(2) requires the preparation of an environmental assessment with respect to such action;

(ii) the date on which such agency notifies the applicant that the application to establish a right-of-way for such action is complete; and

(iii) the date on which such agency issues a notice of intent to prepare the environmental assessment for such action.

(2) DELAY.—A lead agency that determines it is not able to meet the deadline described in paragraph (1) may extend such deadline with the approval of the applicant. If the applicant approves such an extension, the lead agency shall establish a new deadline that provides only so much additional time as is necessary to complete such environmental impact statement or environmental assessment.

(3) EXPENDITURES FOR DELAY.—If a lead agency is unable to meet the deadline described in paragraph (1) or extended under paragraph (2), the lead agency must pay \$100 per day, to the extent funding is provided in advance in an appropriations Act, out of the office of the head of the department of the lead agency to the applicant starting on the first day immediately following the deadline described in paragraph (1) or extended under paragraph (2) up until the date that an applicant approves a new deadline. This paragraph does not apply when the lead agency misses a deadline solely due to delays caused by litigation.

(i) REPORT.—

(1) IN GENERAL.—The head of each lead agency shall annually submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that—

(A) identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in subsection (h); and

(B) provides an explanation for any failure to meet such deadline.

(2) INCLUSIONS.—Each report submitted under paragraph (1) shall identify, as applicable—

(A) the office, bureau, division, unit, or other entity within the Federal agency responsible for each such environmental assessment and environmental impact statement;

(B) the date on which—

(i) such lead agency notified the applicant that the application to establish a right-of-way for the major Federal action is complete;

(ii) such lead agency began the scoping for the major Federal action; or

(iii) such lead agency issued a notice of intent to prepare the environmental assessment or environmental impact statement for the major Federal action; and

(C) when such environmental assessment and environmental impact statement is expected to be complete.

## Sec. 108. Judicial review

(a) LIMITATIONS ON CLAIMS.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of compliance with this Act, of a determination made under this Act, or of Federal action resulting from a determination made under this Act, shall be barred unless—

- (1) in the case of a claim pertaining to a proposed agency action for which—
  - (A) an environmental document was prepared and an opportunity for comment was provided;
  - (B) the claim is filed by a party that participated in the administrative proceedings regarding such environmental document; and
  - (C) the claim—
    - (i) is filed by a party that submitted a comment during the public comment period for such administrative proceedings and such comment was sufficiently detailed to put the lead agency on notice of the issue upon which the party seeks judicial review; and
    - (ii) is related to such comment;
- (2) except as provided in subsection (b), such claim is filed not later than 120 days after the date of publication of a notice in the Federal Register of agency intent to carry out the proposed agency action;
- (3) such claim is filed after the issuance of a record of decision or other final agency action with respect to the relevant proposed agency action;
- (4) such claim does not challenge the establishment or use of a categorical exclusion under section 102; and
- (5) such claim concerns—
  - (A) an alternative included in the environmental document; or
  - (B) an environmental effect considered in the environmental document.

(b) SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT.—

(1) SEPARATE FINAL AGENCY ACTION.—The issuance of a supplemental environmental impact statement shall be considered a final agency action for the purposes of chapter 5 of title 5, United States Code, separate from the issuance of any previous environmental impact statement with respect to the same proposed agency action.

(2) DEADLINE FOR FILING A CLAIM.—A claim seeking judicial review issued under section 102(2)(C) shall be barred unless—

- (A) such claim is filed within 120 days of the date on which such supplemental environmental impact statement is issued; and
- (B) such claim is based on information contained in such supplemental environmental impact statement that was not contained in a previous environmental document pertaining to the same proposed agency action.

(c) PROHIBITION ON INJUNCTIVE RELIEF.—Notwithstanding any other provision of law, a violation of this Act shall not constitute the basis for injunctive relief.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create a right of judicial review or place any limit on filing a claim with respect to the violation of the terms of a permit, license, or approval.

(e) REMAND.—Notwithstanding any other provision of law, no proposed agency action for which an environmental document is required shall be vacated or otherwise limited, delayed, or enjoined unless a court concludes allowing such proposed action will pose a risk of an imminent and substantial environmental harm and there is no other equitable remedy available as a matter of law.

## **Sec. 109. Definitions**



In this title:

(1) CATEGORICAL EXCLUSION.—The term “categorical exclusion” means a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 102(2)(C).

(2) COOPERATING AGENCY.—The term “cooperating agency” means any Federal, State, Tribal, or local agency that has been designated as a cooperating agency under section 107(a)(3).

(3) COUNCIL.—The term “Council” means the Council on Environmental Quality established in title II.

(4) Environmental Assessment.—The term “environmental assessment” means an environmental assessment prepared under section 106(b)(2).

(5) ENVIRONMENTAL DOCUMENT.—The term “environmental document” means an environmental impact statement, an environmental assessment, or a finding of no significant impact.

(6) ENVIRONMENTAL IMPACT STATEMENT.—The term “environmental impact statement” means a detailed written statement that is required by section 102(2)(C).

(7) FINDING OF NO SIGNIFICANT IMPACT.—The term “finding of no significant impact” means a determination by a Federal agency that a proposed agency action does not require the issuance of an environmental impact statement.

(8) INVOLVED FEDERAL AGENCY.—The term “involved Federal agency” means an agency that, with respect to a proposed agency action—

(A) proposed such action; or

(B) is involved in such action because such action is directly related, through functional interdependence or geographic proximity, to an action such agency has taken or has proposed to take.

(9) LEAD AGENCY.—The term “lead agency” means, with respect to a proposed agency action—

(A) the agency that proposed such action; or

(B) if there are 2 or more involved Federal agencies with respect to such action, the agency designated under section 107(a)(1).

(10) MAJOR FEDERAL ACTION.—

(A) In General.—The term “major Federal action” means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.

(B) EXCLUSION.—The term “major Federal action” does not include—

(i) a non-Federal action—

(I) with no or minimal Federal funding;

(II) with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project; or

(III) that does not include Federal land;

(ii) funding assistance solely in the form of general revenue sharing funds which do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

(iii) loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the effect of the action;

(iv) farm ownership and operating loan guarantees by the Farm Service Agency pursuant to sections 305 and 311 through 319 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1925 and 1941 through 1949);

(v) business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and of the Small Business Act (15 U.S.C. 636(a)), or title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.);

(vi) bringing judicial or administrative civil or criminal enforcement actions; or

(vii) extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States.

(C) ADDITIONAL EXCLUSIONS.—An agency action may not be determined to be a major Federal action on the basis of—

(i) an interstate effect of the action or related project; or

(ii) the provision of Federal funds for the action or related project.

(11) REASONABLY FORESEEABLE.—The term “reasonably foreseeable” means likely to occur—

(A) not later than 10 years after the lead agency begins preparing the environmental document; and

(B) in an area directly affected by the proposed agency action such that an individual of ordinary prudence would take such occurrence into account in reaching a decision.

(12) SPECIAL EXPERTISE.—The term “special expertise” means statutory responsibility, agency mission, or related program experience.